

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of  
Application No. 2003-01

SAGEBRUSH POWER PARTNERS, L.L.C.

KITTITAS VALLEY WIND  
POWER PROJECT

NOTICE OF INTENT TO HOLD  
ADJUDICATIVE PROCEEDING;

NOTICE OF OPPORTUNITY AND  
DEADLINE TO FILE PETITIONS FOR  
INTERVENTION – **JUNE 16, 2003;**

NOTICE OF SCHEDULE FOR ORAL  
RESPONSES TO PETITIONS FOR  
INTERVENTION -  
Applicant's Response: **JUNE 26, 2003**  
Parties Replies: **JUNE 26, 2003;**

NOTICE OF INTENT TO HOLD  
PREHEARING CONFERENCE –  
**JUNE 26, 2003**

**The Application**

**Kittitas Valley Wind Power Project, Application No. 2003-01** – On January 13, 2003, Sagebrush Power Partners L.L.C., a wholly owned subsidiary of Zilkha Renewable Energy, submitted an Application for Site Certification to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Kittitas Valley Wind Power Project (Project), a 182-megawatt generation facility consisting of 121 wind generation turbines. Related Project facilities include: access roads; foundations; underground and overhead electrical lines, substations and interconnection facilities to allow transmission through existing Puget Sound Energy or Bonneville Power Administration transmission lines; an operations and maintenance center; and associated supporting infrastructure and facilities. The proposed Project will be located within Kittitas County, on the ridges on either side of state Highway 97, 12 miles northwest of the city of Ellensburg.

EFSEC has taken lead agency status under WAC 173-11-938 of the State Environmental Policy Act (SEPA) rules for the environmental review of this wind generation facility. EFSEC will be preparing an environmental impact statement (EIS) for this project. A public informational and SEPA scoping meeting was held in Ellensburg, Washington, on March 12, 2003. A Land Use Consistency hearing was held in Ellensburg, Washington, on May 1, 2003. EFSEC will also conduct an examination of the project through a formal adjudicative proceeding.

## **Notice of Intention to Conduct an Adjudicative Proceeding**

The Council is reviewing Application No. 2003-01 under the procedures set forth in Chapter 80.50 of the Revised Code of Washington (RCW) and Title 463 of the Washington Administrative Code (WAC) for reviewing applications for new major energy facilities. The statute requires the Council to hold an adjudicative proceeding under Chapter 34.05 RCW, the Administrative Procedure Act. EFSEC intends to hold adjudicative hearings relating to Application No. 2003-01 in accordance with the procedural rules found in Chapter 463-30 WAC and Chapter 34.05 RCW.

## **Notice of Deadline for Submitting Petitions for Intervention – JUNE 16, 2003, 5:00 P.M.**

The statutory parties to an adjudicative proceeding are the Applicant, Sagebrush Power Partners, L.L.C., and the Counsel for the Environment (as defined in RCW 80.50.020(12)), Assistant Attorney General, Michael Lufkin. According to WAC 463-30-050, any state agency that is a member of EFSEC, or has opted to appoint a Council member for this proposal, may participate as a party. Any other person may petition to intervene as a party in this adjudicative proceeding under RCW 34.05.443, RCW 80.50.090, and WAC 463-30-400. The Council will consider the requests for intervention and determine whether or not to grant intervention.

An "intervenor," as defined in RCW 80.50.020(3), may be an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized. Any such "person" who wishes to participate in this proceeding may petition for intervention. The nature of intervenor status and a discussion of factors that the Council has used in deciding whether to grant petitions for intervention are set out later in this notice.

Each person admitted to an adjudicative proceeding as an intervenor is a party to the proceedings only for the purposes and subject to any limitations and conditions specified in the EFSEC order granting intervention.

**In this case, the deadline for submitting requests for intervention is JUNE 16, 2003.**

The Council will consider requests for late intervention according to the requirements of WAC 463-30-400 and other considerations identified in this Notice of Opportunity and Deadline to file Petitions for Intervention – JUNE 16, 2003. See the discussion below for further information. Also see Other Opportunities for Public Participation below.

## **How to Intervene**

To be considered timely, Petitions for Intervention in the matter of Application No. 2003-01 **must be received in the offices of the Council no later than the close of business (5 p.m.) on JUNE 16, 2003.** Petitions for Intervention will not be considered after that date except for good cause as discussed below. A copy of each petition must be served on Sagebrush Power Partners

L.L.C., and on Counsel for the Environment at the same time they are filed with the Council. The names and mailing addresses of the Council, all known parties, and their representatives appear in Attachment A.

Petitions for Intervention must be filed with:

Washington State Energy Facility Site Evaluation Council  
Attn: Allen J. Fiksdal, EFSEC Manager  
P.O. Box 43172  
925 Plum Street SE  
Olympia, WA 98504-3172

Petitions must be filed in hard copy with one original and one copy. A courtesy electronic copy should be provided on disk<sup>1</sup> at the time of filing, or e-mailed to [efsec@ep.cted.wa.gov](mailto:efsec@ep.cted.wa.gov). E-mail alone does not constitute filing with EFSEC.

Persons wishing to intervene should consider relevant provisions of Chapter 463-30 WAC. In particular, WAC 463-30-400 establishes the following requirements for Petitions for Intervention:

All petitions to intervene shall be verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded.

In considering whether to file a petition to become an intervenor, potential parties should recognize that persons who are granted intervenor status assume responsibilities they must meet in order for the adjudicative process to be an effective means for all participants to resolve the significant issues that are raised. Intervenors are expected to appear in the proceeding, either on their own behalf or by an attorney. Intervenors must study other parties' cases so they can participate knowledgeably. They must decide whether to cross-examine other parties' witnesses, and determine the nature and scope of the cross-examination. Intervenors also have the responsibility either to attend the entire proceeding, including prehearing conferences, or to monitor it to learn when their interests will be at issue - otherwise they may be bound by matters that are resolved in their absence. Intervenors have the responsibility to become familiar with the Council's procedural rules and guidelines to enable them to participate knowledgeably and to advance their interests effectively. Because of potential delay to the proceeding that could interfere with rights of the parties involved, and because simply appearing to give advice to one party could give the appearance of impropriety or could adversely affect the rights of others, the Council has a limited ability to instruct participants on procedural matters. Intervention is not a step to be approached casually. Becoming an intervenor in a Council adjudicative proceeding may require a significant commitment of time and financial resources.

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<sup>1</sup> Electronic versions must be IBM-PC compatible and may be supplied on: CD-ROM, IOMEGA (or other brand) 100 MB ZIP disk, or 3 1/2" floppy. For questions or assistance with these requirements please contact Irina Makarow of EFSEC staff at (360) 956-2047, or [irinam@ep.cted.wa.gov](mailto:irinam@ep.cted.wa.gov).

To receive examples of petitions for intervention that have been filed in previous EFSEC cases, contact Irina Makarow of EFSEC staff at (360) 956-2047 or the EFSEC office at (360) 956-2121.

Each petitioner for intervention, the Counsel for the Environment, and each governmental agency appearing as a party must identify the particular issue(s) or concern(s) that the petitioner or agency intends to address as an intervening party. The identification of issues must be specific enough for the Council and other parties to identify the specific problem that could cause harm to the petitioner or agency and the nature of that harm. The designation of issue(s) may be a factor in determining whether to grant intervention and will be used to organize and to manage the hearing. Parties may add additional issues later in the proceeding on the same bases on which the Council may grant late-filed petitions for intervention.

The Council requests that each petitioner for intervention and all governmental agencies who intend to participate as intervenors submit notice of that intention on or before the deadline for intervention, June 16, 2003, 5:00 p.m.

### **Late Intervention for Good Cause Shown**

Upon issuance of a draft Environmental Impact Statement (DEIS) for public comment (at a date to be announced later), parties who have been granted intervenor status may petition the Council to permit them to add new issues based on new information or issues that have been identified in the DEIS. At this time, other persons may also petition the Council to intervene for the first time if they can establish that new information identified in the DEIS, not previously known or reasonably discoverable, demonstrates that an interest of theirs could be impaired or impeded by the proposed project. Persons may seek late intervention or expansion of the issues they may address as parties at other times, but must also demonstrate that their petition to do so is based upon new information, not previously known to them or reasonably discoverable by them, and that their petition is made within a reasonable period after discovering that information.

### **Notice of Intention to Conduct a Prehearing Conference – JUNE 26, 2003**

The Washington State Energy Facility Site Evaluation Council will convene an initial prehearing conference at 1:00 p.m., June 26, 2003, at the Heritage Center, Kittitas County Fairgrounds, 512 North Poplar Street, Ellensburg, Washington, 98926. The purpose of this prehearing conference will be to hear the Applicant's objections to petitions for intervention, petitioner's responses to the Applicant's objections to petitions for intervention, to rule on timely filed petitions for intervention, and to discuss and rule on matters as provided for in WAC 463-30-270:

- (a) Simplification of the scope and issues involved;
- (b) Opportunities for settlement agreements between parties;
- (c) The necessity or desirability of amendments to the pleadings;
- (d) The possibility of obtaining admissions of fact, and admissions of the genuineness of documents which will avoid unnecessary proof;
- (e) Limitations on the number and consolidation of the examination of witnesses;
- (f) Procedural matters including but not limited to: draft hearing guidelines; discovery and scheduling issues; determination of dates for the evidentiary hearing; whether evidence

shall be prefiled; whether the hearing shall be segmented, the location of hearing sessions, and the timing and location of hearing sessions devoted to receiving evidence from the public;

- (g) Distribution of written testimony and exhibits to the parties prior to the hearing; and
- (h) Such other matters as may aid in the disposition or settlement of the proceeding including scheduling the hearing and determination of the sequence of the subject matter.

All participants are asked to be prepared to discuss the matters identified above including intervention request to the extent that they are reasonably able to do so. A detailed notice of first prehearing conference may be sent at a later date to all parties, all petitioners for intervention, and all persons who ask to receive such notices. A form for requesting assistance is attached to this notice as Attachment B; please fill it out and return it if any party or witness needs an interpreter or other assistance.

### **Notice of Schedule For Oral Responses To Petitions For Intervention**

The Applicant must present any objections to intervention requests orally at the first prehearing conference which is scheduled for June 26, 2003. Petitioners' responses to the Applicant's objections to intervention requests shall also be presented orally at the first prehearing conference scheduled for June 26, 2003, for any review of the basis of their intervention. If there are objections, petitioners must be prepared to respond to any objections filed. Appearance by telephone does not constitute an acceptable appearance, and will not be considered by the Council for the June 26, 2003 prehearing conference.

### **Other Opportunities for Public Participation**

Besides formal intervention, public participation in the EFSEC process is accommodated in several additional ways. First, under RCW 80.50.080, the Counsel for the Environment represents "the public and its interest in protecting the quality of the environment"; second, RCW 80.50.090(3) affords an opportunity for members of the public to present testimony in the hearing without having to intervene formally. Third, the public has the opportunity to participate in the environmental review portion of the Council's process through comments on the draft Environmental Impact Statement.

When evidentiary hearings begin, the Council plans to schedule specially-designated sessions for the purpose of receiving the testimony of members of the public, at one or more times and places to be set by later notice of hearing. The Council will maintain a copy of current records of the hearing at its offices in Olympia for the use of persons who may wish to review them. Mr. Michael Lufkin has been designated as Counsel for the Environment by the Attorney General under RCW 80.50.080 to represent the public and its interest in protecting the quality of the environment. Persons wishing to contact Counsel for the Environment should contact him directly at the address, e-mail or telephone number listed on Attachment A.

To obtain additional information about the intervention process, please contact the EFSEC office at (360) 956-2121.

More specific information about the project is available from EFSEC's office, on EFSEC's web site at [www.efsec.wa.gov](http://www.efsec.wa.gov), or from reviewing the application at public libraries at the following locations:

- Washington State Library, Joel M. Pritchard Branch: 6880 Capitol Blvd South, Olympia, WA, 98504-5513, (360) 704-5200;
- Carpenter Memorial (Cle Elum) Library: 302 Pennsylvania Ave, Cle Elum, WA 98922-1196, (509) 674-2313;
- Ellensburg Public Library: 209 North Ruby St, Ellensburg, WA 98926, (509) 962-7250.

#### WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

Dated in Olympia, Washington this 16<sup>th</sup> day of May, 2003.

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Allen J. Fiksdal, EFSEC Manager

**Addresses of the Council and representatives of known parties**  
**Kittitas Valley Wind Power Project Application No. 2003-01**

**Note: Parties petitioning to intervene must serve petitions to all of the addresses below.**

<b>Sagebrush Power Partners L.L.C. Applicant:</b>	
Chris Taylor Zilkha Renewable Energy 210 SW Morrison, Suite 310 Portland, OR 97204  E-mail: <a href="mailto:ctaylor@zilkha.com">ctaylor@zilkha.com</a>  Phone: (503) 222-9400 Fax: (503) 222-9404	Darrel Peebles Attorney at Law 325 Washington Street NE, #440 Olympia, WA 98501  E-mail: <a href="mailto:dpeeple@ix.netcom.com">dpeeple@ix.netcom.com</a>  Phone: (360) 943-9528 Fax: (360) 943-1611
<b>Energy Facility Site Evaluation Council:</b>	<b>Counsel for the Environment:</b>
Mr. Allen J. Fiksdal EFSEC Manager Energy Facility Site Evaluation Council 925 Plum Street SE, Building 4 PO Box 43172 Olympia, WA 98504-3172  E-mail: <a href="mailto:allenf@ep.cted.wa.gov">allenf@ep.cted.wa.gov</a>  Phone: (360) 956-2252 Fax: (360) 956-2158	Michael Lufkin Assistant Attorney General Counsel for the Environment Office of the Attorney General 1125 Washington St. S.E. P.O. Box 40100 Olympia, WA 98504-0100  E-mail: <a href="mailto:MichaelL@atg.wa.gov">MichaelL@atg.wa.gov</a>  Phone: (360) 586-3649 Fax: (360) 664-0229

**Request for Interpreter or Other Assistance**

**NOTICE**

PLEASE TAKE NOTICE that:

- Smoking is prohibited in hearing facilities:
- The hearing facilities are accessible to interested persons with disabilities:
- A qualified interpreter will be appointed at no cost to the party or witness, if a party or witness is hearing impaired or limited English-speaking and needs an interpreter.

*Information needed to provide an appropriate interpreter or other assistance should be given below and the form returned to **Allen Fiksdal, EFSEC Manager, Energy Facility Site Evaluation Council, P.O. Box 43172, 925 Plum Street, Olympia, WA 98504-3172.***

**Please print all requested information.**

Hearing date/location: \_\_\_\_\_

Applicant: Sagebrush Power Partners L.L.C.

Name of Party: \_\_\_\_\_

Primary language: \_\_\_\_\_

Hearing impaired? (Yes) \_\_\_\_ (No) \_\_\_\_

Do you need a certified sign language interpreter? Visual \_\_\_\_ Tactile \_\_\_\_

Other type of assistance needed: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

English-speaking person who can be reached if there are questions:

Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_